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14 **UNITED STATES DISTRICT COURT**  
 15 **EASTERN DISTRICT OF CALIFORNIA**

16 EQUAL EMPLOYMENT  
17 OPPORTUNITY COMMISSION,

18 Plaintiff, and

19 KERRY KIRKSEY,

20 Plaintiff-Intervenor,

21 v.

22 ITT EDUCATIONAL SERVICES, INC.  
23 d/b/a ITT TECHNICAL INSTITUTES,

24 Defendant.

Civil Case No.: 11-02504 KJM-KJN

**CONSENT DECREE**

25 **I. INTRODUCTION**

26 Plaintiff Equal Employment Opportunity Commission (EEOC) filed this action pursuant to  
 27 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, and Title I of the Civil  
 28 Rights Act of 1991, 42 U.S.C. § 1981a. The EEOC alleged that Defendant ITT Educational  
 Services, Inc. (ITT or Defendant) subjected Charging Party Kerry Kirksey to disability  
 discrimination by not accommodating him in the application and hiring process and not hiring him  
 because he is disabled. Mr. Kirksey has intervened as a plaintiff. Defendant answered the complaint  
 and denied it violated the ADA or any other law or statute.

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1 In the interest of resolving this matter, and as a result of having engaged in comprehensive  
2 settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of  
3 this Decree. The Parties agree to the jurisdiction of the Court over this action. The parties agree that  
4 this Consent Decree is fair, equitable, and reasonable, and does not violate the law or public policy.

5 **II. NON-ADMISSION OF LIABILITY**

6 This Consent Decree is not an adjudication or finding on the merits of this case and shall not  
7 be construed as an admission of a violation of the ADA or any other law or statute by Defendant.

8 The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record  
9 herein, and the applicable law, and now approves this Consent Decree in its entirety.

10 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

11 **III. GENERAL PROVISIONS**

12 1. This Court has jurisdiction over the subject matter and the parties to this action.

13 2. This Consent Decree constitutes a full resolution of the Complaints in EEOC and  
14 Kerry Kirksey v. ITT Educational Services, Inc., Civil Action 2:11-CV-02504 KJM-KJN.

15 3. This Consent Decree shall become effective upon its entry by the Court and shall  
16 remain effective for three (3) years after its entry.

17 4. This Consent Decree is final and binding upon the Parties and their successors and  
18 assigns.

19 5. Except as otherwise stated herein, the Parties shall bear their own costs and attorney  
20 fees in this action.

21 **IV. GENERAL INJUNCTIVE RELIEF**

22 Defendant and its officers, agents, employees, successors, and assigns, both at the time that  
23 this Decree becomes effective and for the duration of this Decree, are enjoined from: (a) unlawfully  
24 discriminating against any employee due to his or her disability; or (b) retaliating against any  
25 employee because he or she: (i) opposes or opposed any act or practice made unlawful by the ADA;  
26 (ii) filed a charge of discrimination or assisted or participated in the filing of a charge of  
27 discrimination; or (iii) assisted, testified, or participated in an investigation (including without  
28 limitation any internal investigation undertaken by Defendant) or proceeding brought under the

1 Federal laws prohibiting discrimination or retaliation. Defendant shall not coerce, intimidate,  
2 threaten, or interfere with any individual in the exercise of enjoyment of, or on account of his or her  
3 having exercised or enjoyed, or on account of his or her having aided or encouraged any other  
4 individual in the exercise or enjoyment of, any right granted or protected by the ADA.

5 **V. MONETARY RELIEF**

6 Defendant shall pay monetary relief to Kerry Kirksey in the amount of \$74,775.00 (Seventy  
7 Four Thousand, Seven Hundred Seventy Five Hundred Dollars) and shall pay attorneys fees and  
8 costs to the Legal Aid Society – Employment Law Center in the amount of \$24,225.00 (Twenty Four  
9 Thousand Two Hundred Twenty Five Dollars) These payments shall be made only if Kirksey does  
10 not revoke his signature pursuant to the terms of the separate agreement between Kirksey and ITT  
11 and only upon entry of this Consent Decree. Defendant shall issue an IRS Form 1099 to Mr.  
12 Kirksey for the amount paid to him, and shall issue an IRS Form 1099 to the LAS-ELC for the  
13 amount paid to it. Defendant will mail the checks directly to Kerry Kirksey’s counsel with a  
14 photocopy of the checks, IRS Forms, and related correspondence to the EEOC’s counsel of record,  
15 David F. Offen-Brown, Senior Trial Attorney for the EEOC, at 350 The Embarcadero, Suite 500,  
16 San Francisco, CA 94105-1260 simultaneously with the mailing of the check.

17 **VI. SPECIFIC INJUNCTIVE RELIEF**

18 In order to effectuate the objectives embodied in this Consent Decree, Defendant shall make  
19 the following modifications to its existing policies, procedures and practices.

20 **A. Policy Changes**

21 1. Within sixty (60) days after entry of this Consent Decree, Defendant shall  
22 either confirm that its current personnel policies or handbook include the following (or substantially  
23 similar), or modify them to include:

24 a. Clear and complete definitions of discrimination on the basis of  
25 gender, race, religion, national origin, disability, age and color, including harassment and reasonable  
26 accommodation, and examples to supplement the definitions.

27 b. A statement that discrimination is illegal, prohibited, and will not be  
28 tolerated; that for persons with disabilities who can perform the essential functions of the applicable

1 job with a reasonable accommodation, ITT must provide reasonable accommodations which allow  
2 those persons to perform the jobs in question; that reasonable accommodations will be provided as  
3 needed to allow disabled employees to enjoy equal employment opportunities and equal benefits of  
4 employment; that an applicant or employee must be otherwise qualified for the position to be  
5 provided an accommodation; that reasonable accommodations are required to allow persons with  
6 disabilities to apply for positions at ITT as effectively as applicants without disabilities, including  
7 but not limited to making applications, tests, and other hiring steps as accessible to persons with  
8 disabilities as to persons without disabilities; and that an accommodation does not need to be  
9 provided if it would present an undue burden to the employer

10 c. A procedure for lodging complaints of discrimination, including  
11 language that complaints of discrimination, failure to accommodate religion or disability,  
12 harassment, and/or retaliation will be accepted and investigated irrespective of whether they are  
13 made verbally or in writing. The policy shall also include a clear and strong statement encouraging  
14 persons who believe they have faced discrimination to raise complaints with Defendant's officials.

15 d. The identification of specific individuals or departments, including  
16 their telephone numbers, with whom employees can lodge a complaint of discrimination and/or  
17 submit a request for reasonable accommodation.

18 e. A description of the consequences, up to and including termination,  
19 which will be imposed upon violators of the policies proscribing discrimination and requiring  
20 reasonable accommodation.

21 f. An assurance of maximum feasible confidentiality for persons who  
22 believe that they have been subjected to unlawful discrimination.

23 g. An assurance of non-retaliation for persons and witnesses who report  
24 to Defendant that they believe they have been subjected to unlawful discrimination.

25 h. These policies shall be posted within 60 days on ITT's on-line portal  
26 available to its employees and employees will be notified by email that the policies have changed  
27 These policies shall not be revised in a manner inconsistent with the foregoing during the duration of

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1 this decree without first obtaining consent from the EEOC, and any revision shall be sent to the  
2 EEOC within ten (10) days of its adoption.

3           2.       If Defendant confirms that its current personnel policies include the  
4 requirements of Section VI.A.1. above, Defendant shall provide a copy of those policies to the EEOC  
5 within sixty (60) days after entry of this Consent Decree.

6           **B.       Accommodating Applicants**

7           1.       Posting of Accommodations Policy. Defendant shall prominently display on  
8 materials describing employment with ITT and on its hiring materials a statement that  
9 accommodations are available in the hiring process for applicants with disabilities including a link to  
10 contact information, including an email address and/or telephone number, for making requests for  
11 accommodations. Such display will appear on the main web pages visited by applicants and by job  
12 seekers reviewing job openings with Defendant, and within FAQs (frequently asked questions) about  
13 employment with ITT. Defendant shall ensure that these web pages, including the ITT Tech Career  
14 Portal, and the Portal's successors and revisions, are accessible to individuals with disabilities who  
15 use text-to-speech software and other means of accessing Internet or other content in electronic  
16 form, such as JAWS software. Defendant shall ensure that an inquiry made about accommodation  
17 will receive a prompt, correct response, including by assigning designated staff to monitor and  
18 respond to email requests and by training such staff to engage in the interactive process and to  
19 provide effective reasonable accommodations. Defendant shall accomplish the requirements of this  
20 paragraph within sixty (60) days after entry of this Decree.

21           2.       Training on Accommodations Policy. Within sixty days of entry of this  
22 decree, Defendant shall train staff involved in employment recruitment and hiring at the Rancho  
23 Cordova campus in how to respond appropriately to all requests for accommodation received by  
24 telephone, email, or by any other means of communication.

25           3.       Vendors and Contractors. Defendant shall require Pradco, People Answers,  
26 and other entities Defendant retains to perform any recruiting or hiring function to timely notify it of  
27 any request for reasonable accommodation from persons with sensory impairments. Defendant shall  
28 require that Pradco, PeopleAnswers, and other vendors or entities from which it procures applicant

1 testing materials have the ability to promptly revise or modify the tests to accommodate individuals  
2 with sensory disabilities.

3 4. Development and Implementation of Accessibility Plan. Within sixty (60)  
4 days after entry of this Decree, Defendant shall make and implement internally an accessibility plan  
5 to ensure that its applications, hiring information and resources, and employment-related  
6 assessments and testing, are accessible to persons with sensory disabilities. This plan will outline  
7 potential accommodations available for each step in its application process for persons with sensory  
8 disabilities. In adopting this plan, ITT will consider any suggestions from the EEOC or its  
9 consultants regarding methods to ensure the effectiveness of the accessibility plan, including how to  
10 make its website, digital information, hiring information and resources, and employment-related  
11 assessments and testing accessible to individuals who have sensory disabilities. Within sixty (60)  
12 days after entry of this Decree, Defendant shall ensure that all application- and hiring-related  
13 materials on its website are accessible to persons with sensory disabilities. Defendant will provide to  
14 the EEOC a report outlining the details of review and assessment of Defendant's hiring and hiring  
15 processes and describing the changes made no later than sixty days after implementation of the plan.

16 **C. Training**

17 1. Defendant shall present to all of its current management and personnel  
18 employees at its Rancho Cordova campus and any other management employees involved in  
19 recruitment of employees or hiring in California at least two hours of mandatory equal employment  
20 opportunity training, once every year for the duration of this Consent Decree. Training shall be  
21 presented by an individual with experience in federal EEO laws approved in advance by the EEOC  
22 or by an on-line training. The cost of the training shall be borne by Defendant.

23 2. The training required by this Decree may be in-person or on-line training,  
24 accompanied by materials, and shall educate the employees about the problems of discrimination in  
25 the workplace and the requirement of reasonable accommodation. The purpose of the training will  
26 be to give participants a thorough understanding of discrimination and harassment issues, including  
27 but not limited to theories of liability under the ADA, reasonable accommodation in the hiring  
28 process with specific examples of how it should work, how to handle requests for accommodation,

1 the requirement to hire without regard to disability and to provide reasonable accommodations,  
2 sources of legal protection for victims of discrimination and harassment, and the employer's  
3 obligation to take preventive, investigative, and remedial action with respect to discrimination and  
4 harassment complaints, and to review company policies (including discipline policies) and practices  
5 related to discrimination, harassment, accommodation, and retaliation. The training will further  
6 inform each participant that he or she is responsible for knowing and complying with the contents of  
7 Defendant's equal employment opportunity policy and the reasonable accommodation provisions  
8 therein.

9           3.       Thirty (30) days in advance of each training Defendant shall provide to the  
10 EEOC a copy of the course syllabus for the training and the location and time of the training. The  
11 EEOC, with reasonable notice, may designate EEOC representatives to attend and participate in the  
12 training seminars.

13           4.       The first trainings shall be held within ninety (90) days of the effective date of  
14 this decree; subsequent trainings will be held annually thereafter, and the last trainings will be given  
15 no later than two months prior to the expiration date of this decree.

16           5.       All persons participating in each mandatory equal employment opportunity  
17 training shall either sign an acknowledgment of his or her attendance at the training, the date thereof,  
18 and his or her position with the Company, or ITT will maintain a record that said person participated  
19 on-line.

20           **D.       Posting Regarding This Decree**

21           The Notice of the Consent Decree, attached hereto as Exhibit A, shall be posted within five  
22 (5) days of entry of this Decree, and shall remain posted in a clearly visible location frequented by  
23 employees at Defendant's Rancho Cordova campus during the term of this Consent Decree. Should  
24 the Notice become defaced, marred, or otherwise made unreadable, Defendant will ensure that new  
25 readable copies of the Notice are posted in the same manner as specified herein. Defendant will  
26 send the EEOC certification that the Notice has been posted within ten (10) days of entry of this  
27 Decree.

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1           **E.     Reporting**

2           1.       Within one hundred twenty (120) days of the entry of this Consent Decree,  
3 Defendant shall send to the EEOC a copy of any revised policies and procedures in accordance with  
4 Section VI.A., above, and describe how it has complied with Section VI. B. above.

5           2.       Within thirty (30) days after completion of the trainings described in Section  
6 VI. C. above, Defendant shall send the EEOC appropriate verification of its completion of training,  
7 and shall provide a copy of the employee acknowledgments of attendance at training required by  
8 Section VI. C. 5. above.

9           3.       Discrimination and Accommodation Requests Reports. Defendant shall file  
10 the following reports relating to disability discrimination and/or retaliation and requests for  
11 accommodation made by Defendant’s applicants and employees.

12           a.       Six (6) months after the entry of this Consent Decree, and every six  
13 months thereafter until the expiration of the decree, Defendant will mail to counsel for the EEOC a  
14 report containing the following information and documentation:

15                       (1)     A summary of all requests for reasonable accommodation of  
16 disabilities received by Human Resources from employment applicants. This summary shall contain  
17 a brief description of each request for accommodation, and a statement as to each as to the response  
18 and resolution of such request. For requests for accommodations, the summary shall include a  
19 description of the accommodation sought, any alternative accommodations offered and, if the  
20 request was denied, an explanation as to the reasons for the denial.

21                       (2)     Copies of the documents generated as part of the request and  
22 Defendant’s resolution of such request.

23           4.       Defendant shall submit a written certification to the EEOC verifying the  
24 company’s compliance with the terms of the Consent Decree sixty (60) days prior to the expiration  
25 of this Consent Decree.

26           5.       All documents or information required to be submitted by Defendant to the  
27 EEOC under the terms of this Consent Decree shall be sent to David F. Offen-Brown, Senior Trial  
28 Attorney, EEOC, 350 The Embarcadero, Suite 500, San Francisco, California 94105-1260.



1 **VII. RETENTION OF JURISDICTION AND ENFORCEMENT OF DECREE**

2 1. This Court shall retain jurisdiction over this matter and the Parties for the  
3 purpose of enforcing compliance with the Consent Decree, including issuing such orders as may be  
4 required to effectuate its purposes.

5 2. The duration of this Consent Decree shall be three (3) years from the date of  
6 entry of the Decree, provided that Defendant has complied substantially with the terms of this  
7 Consent Decree. Defendant shall be deemed to have complied substantially if the Court has not  
8 made any finding or orders during the term of the Consent Decree that the Defendant has failed to  
9 comply with any terms of this Consent Decree.

10 3. The EEOC may seek relief for alleged violations of this Decree. Prior to  
11 seeking such relief, the EEOC will notify Defendant's legal counsel of record, in writing, of the  
12 nature of the dispute. This notice shall specify the particular provision(s) that the EEOC believes  
13 Defendant has breached. Defendant shall have thirty (30) days from the date of notice (Dispute  
14 Resolution Period) to attempt to resolve or cure the breach, and the EEOC shall cooperate in good  
15 faith in this process.

16 4. The Parties agree to cooperate with each other and use their best efforts to  
17 resolve any dispute referenced in the EEOC notice.

18 5. After the expiration of the Dispute Resolution Period, the EEOC may apply  
19 for relief to this Court, seeking all available relief.

20 6. The EEOC may petition this Court for compliance with this Decree at any  
21 time during which this Court maintains jurisdiction over this matter. Should the Court determine  
22 that the Defendant has not complied with this Decree, in whole or in part, it may impose appropriate  
23 relief, including an extension of the duration of this decree and other relief the court deems  
24 appropriate.

25 7. This case shall be dismissed with prejudice upon the expiration of this Decree.

26 IT IS SO AGREED:

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Respectfully submitted,

U. S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Dated: April 25, 2013

//s// David F. Offen-Brown  
DAVID F. OFFEN-BROWN  
Attorneys for Plaintiff  
LEGAL AID SOCIETY – EMPLOYMENT LAW  
CENTER

Dated: April 25, 2013

//s// Rachael Langston  
CLAUDIA CENTER  
RACHAEL LANGSTON  
Attorneys for Plaintiff-Intervenor

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

Dated: April 25, 2013

//s// Thomas M. McInerney  
THOMAS M. MCINERNEY  
GREGORY C. CHENG  
KRYSTAL N. LOPILATO  
Attorneys for Defendant

**IT IS SO ORDERED.**

Dated: June 17, 2013.

  
UNITED STATES DISTRICT JUDGE